



October 28, 2019

Eli J. Mark, Esq. – Assistant U.S. Attorney  
Daniel C. Richenthal, Esq. – Assistant U.S. Attorney  
United States Attorney’s Office  
Southern District of New York  
One Saint Andrew’s Plaza  
New York, New York 10007

**Re:     United States v. Ash  
Case No. 19 MJ 9341**

Dear : Mr. Mark and Mr. Richenthal

The purpose of this letter is to request that you make available to me all materials and information which the government must disclose pursuant the Federal Rules of Criminal Procedure, Federal Rules of Evidence and case law.

**(1) Statements**

- (a) **Defendant's Written or Recorded Statements [FRCrP 16(a)(1)(B)].** (1) Any relevant written statement by the defendant within the possession, custody or control of the Government that are known to you, or through due diligence may become known. (2) [Statements made by defendant in her first interview with USAO-SDNY on or about March 1, 2018; Statements made by defendant in her second interview with USAO-SDNY on or about July, 9, 2018; Statements made by defendant on or about April 6, 2018 in a phone conversation with Special Agent LaVale Jackson; Statements made by defendant on or about June 8, 2018 in a phone conversation with LaVale Jackson; Statements made by defendant on or about June 21, 2018 to Apple Customer Support; Statements made by defendant on or about June 23, 2018 to the customer service representative at the Apple Genius Bar]. (3) Any reference in any written record of any oral statement made before or after arrest by the defendant to a person known by the defendant to be a government agent. (4) Defendant's grand jury testimony relating to the charged offenses.

- (b) **Defendant's Oral Statements [FRCrP 16(a)(1)(A)].** The substance of any oral statements made by the defendant whether before or after interrogation by any person then known by the defendant to be a government agent or law enforcement officer that the government intends to use in any manner at trial regardless of whether any written record of the statement exists. In the event the government intends to use such an oral statement at trial, I request that it be reduced to writing and produced. This request includes the substance of the defendant's response to Miranda warnings.
- (c) **Search Warrants and Arrest Warrant Affidavits...** Inspection and copying of all supporting affidavits the government filed in support of the complaint and ALL search warrants obtained and executed in relation to this case.
- (d) Prior statements of all government witnesses who will testify at Preliminary Hearing. [FRCrP S2602]

I request that, in responding to this request for defendant's oral statements, you ask each law enforcement agency involved in investigating or prosecuting this case to search its files for responsive information.

## **(2) Documents, Data and Objects**

- (a) **Material To Preparing A Defense [FRCrP 16(a)(1)(E)(I)].** Inspection, copying or photographing of documents, data or tangible objects within the possession, custody or control of the government and are material to the preparation of the defense. Separately identify any materials the government intends to use at trial in-chief.
- (b) **Material Government Intends To Use In-Chief [FRCrP 1G(a)(1)(E)(ii)].** Produce or otherwise make available all documents, data and tangible objects, including tape recordings and transcripts, which the government intends to use as evidence in-chief. In this regard, produce any index or working exhibit list of items you intend to introduce at trial. Provide notice of the government's intention to use any evidence in-chief discoverable under Rule 16 which the defense may seek to suppress [FRCrP 12(b)(4){8}].
- (c) **Obtained From or Belonging To Defendant [FRCrP 16(a)(1)(E)(iii)].** All materials obtained from or belonging to the defendant that are within the possession, custody or control of the government regardless of how obtained or the identity of the person who obtained them.

## **(3) Reports of Examinations and Tests [FRCrP 16(a)(1 )(F)].**

Results or reports of physical or mental examinations, and scientific tests or experiments within the possession, custody' or control of the government or by the

existence of due diligence may become known to you, and material to the preparation of the defense or are intended for use by the government as evidence in chief at trial. In the event the results of any scientific tests were reported orally to you or to any government official or law enforcement officer, I request that you cause a written report of the results to be made and produced. In complying with this request, please contact any law enforcement agency involved in the investigation or prosecution of this case to determine whether relevant examinations or tests were conducted, and, if so, produce the results or reports.

**(4) Expert Witnesses [FRCrP 1G(a)(1)(G)]**

In the event you intend to offer any expert testimony under the Federal Rules of Evidence through any witness, including a government agent or employee or law enforcement officer. I request that you prepare and produce a summary of the witness' opinion testimony, the grounds or basis for any such opinion testimony and the qualifications of the expert witness.

**(5) Other Offense Evidence [FRE 404(b)]**

I request notice of any "other offense" evidence you intend to introduce in your case in-chief. At the time you identify any "other offense" evidence you intend to offer in rebuttal, please produce and identify such evidence separately.

**(6) Summary Witness or Charts [FRE 100G]**

In the event you intend to call a summary witness at trial or present evidence in the form of a chart, I request production a reasonable time prior to trial of all of the original documents or tape recordings on which such testimony or chart is based.

**(7) Brady/Giglio Material**

Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), produce sufficiently in advance of trial any exculpatory evidence material to guilt or punishment, including impeachment evidence or information. Should you have a question with regard to whether certain information constitutes *Brady/Giglio* material, or when it must be produced, I request that you present the information to the court, with notice to me, for review in camera to resolve these issues.

If you believe that any *Brady/Giglio* material is also **Jencks Act** material I request that you present it to the court for in camera review and advise me of the general nature of the evidence. However, I request that you produce prior to trial all *Brady/Giglio* material that is not covered by the **Jencks Act**.

**(8) Jencks Act Material**

I request pretrial production of **Jencks Act** material within a reasonable time prior to the day of a witness' direct examination.

**(9) Sentencing Information**

The Sentencing Commission has encouraged prosecutors prior to the entry of a plea of guilty to disclose to a defendant the facts and circumstances of the offense and offender characteristics, then known to the prosecuting attorney, that are relevant to the application of the sentencing guidelines. U.S.S.G. §6B1.2, p.s. comment. To insure that my client can make an informed and intelligent decision regarding the possible or probable consequences of pleading guilty or requesting a trial, I request that you advise me of any facts and circumstances presently known to the government or reasonably discoverable, that relate to sentencing issues under the sentencing guidelines, or to calculation of the applicable sentencing guideline range, should my client be convicted of anyone or more of the charges in the complaint.

More specifically, I request that as soon as possible you provide me with the following information as to this case:

- What guidelines does the government contend are applicable?
- What aggravated offense characteristics, if any, does the government contend are applicable?
- What adjustments, if any, does the government contend are applicable?
- Upon what grounds, if any, will the government seek a departure from the guidelines?
- What criminal history category does the government contend is applicable?

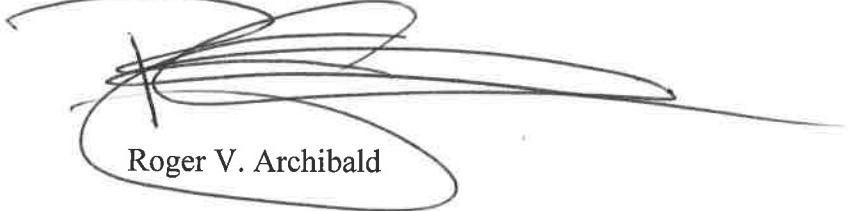
I am requesting any information that would bear upon computation of the following sentencing and guideline factors:

- Base offense level
- Specific offense characteristics
- Relevant conduct
- Adjustments or criminal history

I also request any guilt-related **Brady** information that is favorable to my client and material to the court's determination of a sentence under the sentencing guidelines in the event of a plea of guilty or conviction.

Pursuant to your continuing duty to disclose information [FRCrP (c)], immediately advise me of new information as it becomes available. If you have any questions regarding the nature of the requests contained in this discovery letter, please contact me. I look forward to your early response.

Sincerely,



Roger V. Archibald